

1 A Correct.

2 Q And then you have ESPNU with 13
3 games and 13 appearances, correct?

4 A Correct.

5 Q And they have EPSN2/Raycom with
6 six games and 12 appearances, correct?

7 A Correct.

8 Q And those are joint rights,
9 correct?

10 A Correct.

11 Q In a few spaces later on down, you
12 have Comcast SportsNet with 7 games and 7
13 appearances. Correct?

14 A Correct.

15 Q That means those seven games are
16 non-conference games, correct?

17 A I believe that's the case, yes.

18 Q That means they're playing only
19 one ACC team versus a non-ACC team, which is
20 why you only have one appearance per game of
21 an ACC team.

22 A That would follow.

1 Q Do you think that's valuable to
2 have seven non-conference games as your
3 exclusive product?

4 A If you are in the region where
5 there are ACC fans, you want to have as many
6 games featuring ACC teams as possible. So in
7 that sense, it's valuable.

8 Q You don't know what those seven
9 games are, do you, sir?

10 A No, they're not identified here.

11 Q I can help you out.

12 MR. KIM: May I approach, Your
13 Honor?

14 JUDGE SIPPEL: You may, sir.

15 BY MR. KIM:

16 Q I'm showing you what's been marked
17 as MASN Exhibit No. 353. And I'll ask you if
18 you recognize that, sir.

19 A As in recognize having seen it
20 before, I have not.

21 Q I'll represent to you, sir, that I
22 pulled this off the same website, tacc.com,

1 official website of the ACC that I pulled off
2 the previous document.

3 I I can direct your attention to
4 page five of the document, does it have at the
5 top 2008/2009 ACC Basketball Schedule?

6 A Did you say five?

7 Q I'm sorry, page six -- I'm sorry,
8 sir, it's page six on the upper left-hand
9 corner, page 5 on the lower right-hand corner.

10 A Got it.

11 Q Does that say on top 2008/2009 ACC
12 Basketball Schedule?

13 A It does.

14 Q And if you look on the upper left
15 hand corner, you'll see a shaded box with a
16 legend. Are you with me, sir?

17 A I am,

18 Q Okay. And it says CSN. And then
19 it says across from that Comcast SportsNet.
20 Do you see that?

21 A Yes.

22 Q Well, let's take a look and see

1 what kinds of games CSN gets as an exclusive
2 product. If you go with me to November 21st,
3 2008.

4 A That would be Friday -- okay, I'm
5 with you.

6 Q Do you see Vermont and Maryland,
7 CSN 8:00 p.m?

8 A Yes.

9 Q Do you know what the mascot for
10 the Vermont team is?

11 A I do not.

12 Q Let' go to December 12th, 2008.
13 Do see Delaware State at Maryland on CSN?

14 A Yes.

15 Q I think I missed one, sir. If you
16 go to Sunday, November 6th, you'll see VMI at
17 Virginia on CSN. Correct?

18 A Yes.

19 JUDGE SIPPEL: Wait, what is the
20 date? Sunday --

21 MR. KIM: Sunday, November 16th,
22 Your Honor.

1 JUDGE SIPPEL: Oh, okay, VMI at
2 Virginia.

3 BY MR. KIM:

4 Q Then the next one is if you go to
5 Monday, December 22nd, you'll see American at
6 Maryland on CSN, correct?

7 A Correct.

8 Q Now, if I could take you to
9 January, 3rd, a Saturday --

10 MR. KIRK: Objection, I think you
11 missed one on that page.

12 MR. KIM: I don't believe I did.

13 MR. KIRK: November 17th?

14 MR. KIM: Oh, you're right. I beg
15 your pardon.

16 BY MR. KIM:

17 Q If I could take you back to
18 Monday, November 17th, Mr. Gerbrandt, do you
19 see Mount St. Mary's at Virginia Tech?

20 A I do.

21 Q And that's also on CSN at 7:00
22 p.m., correct?

1 A Yes.

2 Q And now if I could turn the page -

3 -

4 JUDGE SIPPEL: Now before you turn
5 the page, what was the one in December? What
6 was the December date?

7 MR. KIM: There's two, Your Honor,
8 there's one on December 12th, which is
9 Delaware State at Maryland --

10 JUDGE SIPPEL: December 12th, yes,
11 I have that. Okay.

12 MR. KIM: And there's Monday,
13 December 22nd, which is American at Maryland.

14 JUDGE SIPPEL: Monday, December
15 the 22nd, okay. I'm with you.

16 BY MR. KIM:

17 Q And then if I could ask you to
18 turn the page, Mr. Gerbrandt, on Saturday,
19 January 3rd, there are two games, Xavier at
20 Virginia on CSN at 2:00 p.m., and USC
21 Charlotte at Maryland on CSN at 4:00 p.m. Did
22 I read those correctly?

1 A Yes.

2 Q And then Wednesday, January 7th,
3 there was Morgan State at Maryland on CSN at
4 8:00 p.m., correct?

5 A Yes.

6 Q Do you see any other CSN-exclusive
7 games listed on the schedule?

8 A I see at least three that haven't
9 been assigned. But I don't see any of them
10 saying CSN.

11 Q So we went through the eight total
12 games that have CSN next to them on the
13 schedule, correct?

14 A I wasn't keeping track. But if
15 you said eight, if that included all of them
16 that we've identified, yes.

17 Q By my count, that was eight. Five
18 of them involved Maryland, correct?

19 A I'll accept your representation.
20 I wasn't keeping track.

21 Q Okay, well let me just run through
22 them. The Vermont Catamounts at Maryland on

1 Friday, November 21st, 2008, the Delaware
2 State Hornets at Maryland on Friday,
3 12/12/2008, the American Eagles at Maryland on
4 Monday, December 22nd, 2008, the UNC Charlotte
5 49ers at Maryland on Saturday, January 3rd,
6 2009, and the Morgan State Bears at Maryland
7 on Wednesday, January 7th, 2009. Those are
8 five games, correct?

9 A Yes.

10 Q So if five of the exclusive eight
11 games involve Maryland, does that indicate
12 that Comcast is picking these to target
13 Southwest Virginia?

14 A The only reason I'm struggling
15 with the answer is I'm not sure that Comcast
16 picks the games. I think they may be
17 assigned. But I'm or somebody else makes the
18 schedule. But those are not Southwestern
19 Virginia necessarily teams. They're Maryland.

20 Q And Maryland is not showing up on
21 your surveys as one of the top four teams that
22 people in Southwestern Virginia might be

1 interested in in the ACC, correct?

2 A That is correct.

3 MR. KIM: Your Honor, we offer
4 MASN 353 and 354 into evidence.

5 JUDGE SIPPEL: Objection?

6 MR. KIRK: I object because I
7 don't believe this indicates the extent of
8 Comcast's carriage. I think it misrepresents
9 the scope. I can get into that on redirect.

10 JUDGE SIPPEL: Well, if you can
11 point out those limitations, if it does have
12 those limitations, it still seems sufficiently
13 relevant. So I'm going to -- if there is an
14 objection, I'm going to overrule it. These
15 are both received, 353 and 354.

16 (Whereupon, the above-referred to
17 documents were received into the
18 record as MASN Exhibit Nos. 353
19 and 354.)

20 MR. KIM: Thank you, Your Honor.

21 BY MR. KIM:

22 Q Mr. Gerbrandt, isn't it true that

1 in every disputed reason MASN telecasts
2 numerous games or teams that your surveys say
3 the fans follow the most in those regions?

4 A Yes.

5 Q And it's true because division
6 opponents play each other 18 to 19 times a
7 year, correct?

8 A That is correct.

9 Q Okay. So the Yankees play the
10 Orioles 18 to 19 times a year?

11 A Correct.

12 Q And the Red Sox play the Orioles
13 18 to 19 times a year.

14 A Correct.

15 Q So do the Rays play the Orioles 18
16 to 19 times a year?

17 A I have to double check whether
18 they're in the same conference they do or the
19 same league.

20 Q And the Braves play the Nationals
21 18 to 19 times a year?

22 A Correct.

1 Q And the Mets play the Nationals 18
2 to 19 times a year?

3 A Correct.

4 Q And for non-division intra-league
5 games there are typically six to nine a
6 season, correct?

7 A Sounds about right.

8 Q So the Pirates would play the Nats
9 about six to nine times a year?

10 A Yes, that sounds about right.

11 Q And the Reds would play the Nats
12 about six to nine times a year?

13 A Okay.

14 Q And the Cubs play the Nats six to
15 nine times a year?

16 A Okay.

17 Q And the Dodgers play the Nats six
18 to nine times a year, correct?

19 A Sounds about right.

20 Q Okay. So there are a number of
21 games shown on MASN each season for teams that
22 make your list that fans follow the most in

1 each of the regions, correct?

2 A Correct.

3 Q And even if those fans have
4 absolutely zero interest in seeing the Orioles
5 or the Nationals, correct?

6 A That is correct.

7 Q So in the Tri-Cities area under
8 your follow-most survey, you get some order of
9 teams. But you could pick Braves, Yankees,
10 and Red Sox, correct?

11 A Are we talking about the online or
12 the phone now?

13 Q I'm trying to do an aggregate,
14 sir.

15 A Okay. Well that's --

16 Q Let's break it down one more time.
17 Okay, let's look at Tri-Cities -- I'm looking
18 at MASN Exhibit 356 for ease of exposition --
19 and just look up when you're ready, sir.

20 JUDGE SIPPEL: You're on what --
21 you're MASN 356?

22 MR. KIM: Yes, Your Honor. It's a

1 single page summary document.

2 JUDGE SIPPEL: All right.

3 MR. KIM: It's the one that is
4 landscaped, Your Honor.

5 JUDGE SIPPEL: It's the one that's
6 what? Yes, I'm looking for that. That's what
7 I'm looking for. I have it. No thanks, I
8 have it, yes.

9 BY MR. KIM:

10 Q So, Mr. Gerbrandt, in the Tri-
11 Cities region under your phone survey, the top
12 three teams are the Braves, the Yankees, and
13 the Red Sox, correct?

14 A Correct.

15 Q On MASN, fans of the Braves, the
16 Yankees, and the Red Sox would see about 54 to
17 57 games a year, correct?

18 A I haven't done the math but I'll
19 accept your representation.

20 Q So let's look in Roanoke, in you
21 phone survey for follow most, the Yankees, the
22 Braves, and the Red Sox come one, two, three,

1 correct?

2 A That is correct.

3 Q And in Roanoke, on MASN, fans of
4 the Yankees, the Braves, or the Red Sox would
5 see about 54 to 57 games a year, right?

6 A Sounds about right.

7 Q And in Harrisburg, in your follow
8 most survey, the Phillies, the Yankees, and
9 the Pirates come up one, two, tree in the
10 phone survey, correct?

11 A Yes, they do.

12 Q And fans of those teams would see
13 them about 42 to 48 times a year on MASN,
14 correct?

15 A I'll accept your representation.
16 I have done that math separately.

17 Q So even if your analysis was
18 correct and even if you analyzed the right
19 question, fans would still see very popular
20 teams on MASN about 40 to 60 times a year in
21 every disputed market, correct?

22 A Correct.

1 Q And that's not including any games
2 of the Orioles or the Nationals, which only
3 make the number go up if fans like them, too,
4 correct?

5 A If you included those teams,
6 that's correct.

7 Q How does that compare to your
8 analysis of what ACC games are supposedly
9 driving the bus for Comcast SportsNet in
10 Southwest Virginia?

11 A Obviously far fewer teams. But
12 then there are far fewer college basketball
13 teams as well -- basketball games in a season.

14 Q So far fewer games, correct?

15 A Correct. But we're talking about
16 baseball compared to basketball. And pro
17 versus college. So a little apples and
18 oranges.

19 Q Correct. These pro programming is
20 generally more valuable than college
21 programming, correct?

22 A No, it's more voluminous. There's

1 more of it.

2 MR. KIM: I'll pass the witness,

3 Your Honor.

4 MS. MUMAW: Nothing from the

5 Bureau.

6 JUDGE SIPPEL: Redirect?

7 MR. KIRK: If I may, Your Honor.

8 JUDGE SIPPEL: Yes, sir.

9 REDIRECT EXAMINATION

10 BY MR. KIRK:

11 Q Mr. Gerbrandt, do you know whether
12 CSN let Atlantic get certain ACC rights from
13 a deal with FOX?

14 A That is my understanding.

15 Q So a number of the games that are
16 listed in this Exhibit 353 that indicate FOX
17 may, in fact, be shown by Comcast within the
18 Comcast territory, correct?

19 A That is correct.

20 Q Previously in your testimony on
21 cross-examination, you were trying to explain
22 your analysis and compare it to the

1 correlation coefficient. Can you explain how
2 you apply the correlation coefficients to
3 these surveys?

4 A What I did was I took a look at
5 the -- I calculated a correlation coefficient
6 individually. I compared -- first I compared
7 the online surveys with the phone survey. And
8 then I compared each of those with the
9 merchandise. So I calculated a correlation
10 coefficient for each of those comparisons.

11 Q And what does a correlation
12 coefficient do?

13 A A correlation coefficient measures
14 the distance of data points relative to a
15 regression line. In a more colloquial way, it
16 basically calculates how two sets of data, how
17 closely do they follow each other. Are the
18 highs high or are the lows low?

19 And the coefficient itself
20 measures the distance away from the line as
21 well as the direction of the line. So it can
22 be positive, it can be negative.

1 Q And what did that analysis tell
2 you here?

3 A It showed that there was a very
4 high correlation between the phone survey and
5 the online survey. And it also showed that
6 there was a high correlation between the phone
7 survey and the merchandise sales. So they
8 tracked with each other.

9 Q Now if I could turn you to MASN
10 Exhibit 351, the top two box summary --

11 JUDGE SIPPEL: Sorry, what number
12 are you one?

13 MR. KIRK: MASN Exhibit 351, Your
14 Honor.

15 JUDGE SIPPEL: Okay.

16 BY MR. KIRK:

17 Q Mr. Gerbrandt, during your cross
18 examination you were trying to explain how
19 this table improperly showed accounts. Could
20 you provide further explanation for me?

21 A I'll give you just a very obvious
22 example. If you could add the two figures

1 together as has been done here, you should be
2 able to add any one of the, you know, a whole
3 group of these numbers together.

4 Let's just take the first one, the
5 phone survey, Table 16, top two-box summary,
6 if you add one through five together, you come
7 up with more than 100 percent, clearly that's
8 incorrect.

9 I mean so if you can't add them
10 all up together, you clearly can't add any two
11 together. It's not that kind of percentages.

12 Each -- and the reason is each
13 respondent was asked to answer how they felt
14 about a particular team on a zero to five
15 basis for a group of -- it was more than a
16 dozen teams. So they could have answered five
17 on every one of them, which would have, you
18 know, gotten 1,200 percent if you added it up
19 that way.

20 Clearly, it was designed to look
21 at each team individually. And then to be
22 able to rank the responses. But you don't add

1 the two responses together.

2 Q And I believe previously in your
3 testimony you indicated that aided questions
4 tend to come with a bias, is that correct?

5 A There is a well-known response
6 bias that it overstates the answer because you
7 are forcing the respondent to make a choice
8 rather than it's, you know, tell me actually
9 how you feel, which is what an unaided
10 question is.

11 Here it's okay, you have to make a
12 choice, pick a number. And you know that that
13 is the case going in so you have to factor
14 that into the analysis of the data.

15 Q And Exhibit 351, was that based on
16 an aided or unaided question?

17 A This is definitely an aided
18 question.

19 Q And then for MASN Exhibit 352,
20 which was the middle box, was that an aided or
21 unaided question?

22 A That was an aided question.

1 Q Okay. And does that also suffer
2 from the same double counting issue you talked
3 about with regard to MASN Exhibit 351?

4 A Exactly. I could pick any one of
5 these and say okay, let's add all the
6 percentages up and they would come up to over
7 100. So clearly that's not a problem that you
8 could analyze in the data.

9 MR. KIRK: No further questions,
10 Your Honor.

11 JUDGE SIPPEL: Nothing?

12 (No response.)

13 JUDGE SIPPEL: You testified that
14 -- I guess you volunteered that the sum and
15 substance of the NFL Comcast case is about
16 price, correct?

17 THE WITNESS: That was -- yes.

18 JUDGE SIPPEL: What would you say
19 with respect to this case? What is it about
20 in this case? Is price part of it? Is price
21 not part of it? Is it something other than
22 price?

1 THE WITNESS: My understanding is
2 that price is less of an issue because it is
3 carried on a -- because it is a regional
4 sports networking. And that this is really
5 much more about trying to satisfy fan interest
6 and potential subscriber demand. This is much
7 more about they are going to carry a network.
8 The question is which one do they carry.

9 JUDGE SIPPEL: Oh, Comcast is
10 going to carry --

11 THE WITNESS: Correct.

12 JUDGE SIPPEL: -- which one do
13 they carry.

14 THE WITNESS: Right.

15 JUDGE SIPPEL: All right. That's
16 all I have.

17 Anymore?

18 MR. KIM: No, sir.

19 JUDGE SIPPEL: That's it then.

20 That concludes all the testimony.

21 Okay, you are excused, sir. Thank
22 you very much.

1 THE WITNESS: Thank you.

2 JUDGE SIPPEL: I just want to ask
3 that the transcript of the deposition, we've
4 done this in the past with others. If you
5 would just include this as Part A to his
6 testimony. His testimony is Comcast 3, so
7 Comcast 3A would be the excerpts of this
8 deposition of April 10.

9 MR. KIM: Yes, sir, you know, Your
10 Honor, I think that we would propose is to
11 have a back and forth with the attorneys from
12 Comcast to make sure that we do as the Court
13 previously asked and insert in the record all
14 of the page and lines that we actually used in
15 court for all the witnesses.

16 And I think we could probably get
17 that done by the end of this week if we get
18 the completed of today by tomorrow. I think
19 we just knock those out and get it to the
20 court by the end of this week.

21 JUDGE SIPPEL: Well, that would be
22 fine.

1 MR. KIM: Okay.

2 And, Your Honor, if I could do a
3 few housekeeping things, would this be a good
4 time.

5 JUDGE SIPPEL: Well, it would be
6 but before you do that, I'm going to ask that
7 -- I'm going to require by oh, I'd say by one
8 o'clock tomorrow afternoon -- well, let's say
9 by eleven o'clock tomorrow morning, proposed
10 dates.

11 MR. KIM: Your Honor, I have those
12 with me.

13 MR. TOLLIN: Yes, we've already
14 talked about them.

15 MR. KIM: Yes, sir, I believe that
16 I am handing forth to Your Honor what has been
17 agreed to by counsel for Comcast and counsel
18 for the Enforcement Bureau. And I'm happy to
19 tender this to the court if the court wishes.

20 JUDGE SIPPEL: Please do.

21 MR. KIM: Yes, sir. And if you
22 can read the dates off, just so everyone knows

1 we have this version correct, I'd appreciate
2 it.

3 JUDGE SIPPEL: So it will be in
4 the transcript, yes. Do you have a second
5 copy of this by the way?

6 MR. KIM: Yes, sir. We've got
7 additional copies we're passing around.

8 MR. KIM: Okay. This reads June
9 26th -- this is all 2009, of course -- June
10 26th, proposed findings of fact and
11 conclusions of law; July 10th, proposed reply
12 findings of fact and conclusions of law; July
13 20th, proposed recommended decisions and July
14 31st, Enforcement Bureau comments.

15 That looks to me like it covers
16 all the points that I had, yes. That's it.

17 I assume -- but there being no
18 objection, I'll issue that order tomorrow.

19 What days of the week are these,
20 by the way, June 26th and all that. Was that
21 checked out because --

22 PARTICIPANT: Well, we know